

Departmental Briefing



Department of Conservation
Te Papa Atawhai

In Confidence

GS ref: 18-B-1452
DOCCM: 5594785

To: Minister of Conservation **Date:** 4 March 2019

Subject: **Independent Review report: Extension of Moutere Ihupuku / Campbell Island Marine Reserve**

Action sought: Accept the accompanying report and forward it to the Minister of Fisheries.
Direct DOC to work with Fisheries New Zealand to provide advice to support your joint decision-making with Minister of Fisheries on the recommendations in the report.

Time Frame: Once you provide the report to the Minister of Fisheries, he has a statutory requirement to provide his response to you within 90 working days. If your decision is to extend the marine reserve this must be implemented by 2 March 2020.

Risk Assessment: No risk in receiving the report, however there will be significant interest from Kāi Tahu and stakeholders affected by your decision on the report.

Department's Priority: Normal

Level of Risk: Low

Contacts


Name and position	Mobile	First contact	Principal author
Astrid Nunns Strategic Issues Manager	9(2)(a)	✓	✓


Executive summary – Whakarāpopoto ā Kaiwhakahaere

1. This briefing accompanies the report of the independent review of the Moutere Ihupuku / Campbell Island Marine Reserve.
2. This review is required by the Subantarctic Islands Marine Reserves Act 2014 to consider whether the remaining 61% of the territorial sea around Campbell Island (called 'the additional area' in the legislation) should be added to the current marine reserve.
3. The independent reviewer, Envirostrat Consulting Limited (Envirostrat) has satisfied the legislative requirements for the review and has provided you a recommendation report – see Attachment 1.
4. Kāi Tahu has advised DOC that they have significant concerns about the reviewer's recommendation; DOC is continuing to work with them and will advise you of the outcomes.
5. You are now required to consult with, and provide the attached recommendation report to, the Minister of Fisheries. The Minister of Fisheries has a statutory requirement to provide his response to the report, to you, within 90 working days.
6. You then have a role to decide, in agreement with the Minister of Fisheries, whether or not to extend the marine reserve. If you agree to extend the reserve, this must be implemented by 2 March 2020.
7. DOC and Fisheries New Zealand have collaborated productively throughout the review process and will work together to provide joint advice to you and the Minister of Fisheries to support your joint decision-making.

We recommend that you (Nga Tohutohu) –

	Paragraph Reference	Decision
(a) <u>Note</u> that the independent reviewer has satisfied the legislative requirements for the review of the Moutere Ihupuku / Campbell Island Marine Reserve	13 - 17	
(b) <u>Note</u> the concerns of Kāi Tahu; DOC is continuing to work with Kāi Tahu and will advise you of the outcomes in further advice	18, 25	
(c) <u>Provide</u> the recommendation report at Attachment 1 to the Minister of Fisheries as soon as practicable	27	
(d) <u>Note</u> that once you provide the report to the Minister of Fisheries he has a statutory requirement to provide his response to it, to you, within 90 working days	3	
(e) <u>Direct</u> DOC to work with Fisheries New Zealand to provide advice to support your joint decision-making with Minister of Fisheries on the recommendations in the report		<input checked="" type="radio"/> Yes <input type="radio"/> No


Mike Slater
DDG Operations
For Director-General of Conservation

 10/3/19
Hon. Eugenie Sage
Minister of Conservation

Purpose – Te Pūtake

1. The purpose of this briefing is to provide you with the recommendation report of the independent review of the marine reserve around Moutere Ihupuku / Campbell Island (the marine reserve). You and the Minister of Fisheries now have a role to jointly decide whether or not to extend the size of the marine reserve.
2. This briefing advises you that Kāi Tahu has raised significant concerns about the recommendation in the review, and that DOC and Fisheries New Zealand will provide you with joint agency advice to support your decision-making role.

Background and context – Te Horopaki

3. In 2010, after a two-year collaborative process, the Subantarctic Marine Protection Forum provided recommendations to the Minister of Conservation and Minister for Primary Industries (the Ministers) for the creation of marine protected areas around the Subantarctic Islands.
4. The Ministers' decisions were enacted in the Subantarctic Islands Marine Reserves Act 2014 (the Act).
5. The Act implemented a marine reserve over 39% of the territorial sea around Campbell Island / Moutere Ihupuku. It also contained a requirement that three years later a review would consider whether the remaining 61% of the territorial sea (called 'the additional area' in the legislation) should be included in the marine reserve – see Attachment 2.

Subantarctic Islands Marine Reserves Act 2014 review clause

6. The Act required DOC to commission an independent reviewer to undertake the review and provide a recommendation report to the Minister of Conservation. The deadline for the review to be completed is 2 March 2019, this has been met.
7. When commissioning the review, the Act required DOC to consult with the Ministry for Primary Industries (now Fisheries New Zealand) and, in line with the requirements of section 4 of the Conservation Act 1987, DOC has a responsibility to consult with Kāi Tahu¹.
8. Along with the deadline date of 2 March 2019, the legislative requirements for the review are:
 - a. To consult with relevant stakeholders
 - b. To take into account:
 - i. the value of the additional area to a deepwater crab fishery
 - ii. the impact of a deepwater crab fishery in the additional area on the marine environment and ecosystems
 - iii. the biodiversity values in the additional area.

Process for the review

9. The most recent research on the deepwater crab fishery in the Moutere Ihupuku / Campbell Island territorial sea was in 1976. The lack of current research was stated as a risk in that it may hamper the reviewer coming to a logical conclusion. DOC decided that the Marine Protected Areas "Planning Principle 7: Best available information will be taken into account in decision-making" would guide the review. The review proceeded on that basis.

¹ In the Kāi Tahu dialect 'k' and 'ng' in Maori words are used interchangeably. Kāi Tahu is therefore the dialectic spelling of Ngāi Tahu.

Cross-organisation governance group agreed to appoint Envirostrat Consulting Ltd

10. A cross-organisation governance group was set up to ensure the legislative requirements were met. DOC was represented on this group by the Planning, Permissions and Land Director (Chair), the Murihiku Operations Manager, and the National Support and Advice Manager. The Ministry for Primary Industries (which then became Fisheries New Zealand) was represented by the Acting Fisheries and Aquaculture Policy Manager, and Kāi Tahu was represented by Tā Tipene O'Regan.
11. The governance group utilised the All of Government Consultancy Panel to appoint Envirostrat Consulting Limited (Envirostrat) to conduct the independent review required by the Act.

Scope of legislative requirements clarified to include consideration of other fisheries

12. Fisheries New Zealand made a request at the outset of the project that Envirostrat "consider fisheries, other than deep water crab, upon which the outcome of the review might impact – current and potential future impacts".^{9(2)(h)}

Envirostrat undertook a comprehensive review

13. Envirostrat employed a team of experts with experience in stakeholder engagement, marine biodiversity and fisheries (both science and economics).
14. Envirostrat consulted with members of the Subantarctic Regional Marine Protection Planning Forum, stakeholders of, and submitters to, that Forum, as well as Te Rūnanga o Ngāi Tahu, commercial fishers and environmental groups, as well as DOC and Fisheries New Zealand and other stakeholders in the marine space.
15. Secondly, Envirostrat undertook a scientific review of the "additional area". This included the existence and value of all fisheries, the impact of these on the marine environment and ecosystems, as well as the biodiversity values. As above, this was done on best available information much of which was 40 years old.

Envirostrat received feedback on draft recommendation report

16. Envirostrat provided a draft of the recommendation report to the governance group, and each organisation represented provided feedback to Envirostrat. Envirostrat considered the feedback and most of it has been reflected in the final recommendation report.

Legislative requirements have been met

17. The Chair of the governance group has advised that Envirostrat executed the review to time and on budget and have provided a report of the review, which satisfies the requirements of the Act – see Attachment 1. The report includes a recommendation for your consideration.

Treaty principles (section 4) – Nga mātāpono o te Tiriti (section 4)

18. DOC consulted with Kāi Tahu as a priority and met with the appropriate rūnaka at the outset of the project. Representatives of those rūnaka advised that having a representative on the governance group would be one appropriate means of being involved in the review -- as noted above this is Tā Tipene O'Regan. The DOC project manager also twice accompanied Envirostrat to meet with representatives of Te Rūnanga o Ngāi Tahu.
19. Significant concerns have been raised by Kāi Tahu about the recommendation made in the report. They consider the recommendation is "based entirely on values and not on reliable and up-to-date evidence". Further, they have advised that for the State to extend the marine reserve is "a massive and unilateral reduction of the effective Quota

System [and] is contrary to the Treaty of Waitangi Fisheries Claims Settlement Act of 1992”.

20. DOC is continuing to work with Kāi Tahu around the concerns they have voiced and will provide you with further advice to inform your consultation and decision-making with the Minister of Fisheries.

21. 9(2)(f)(iv)

9(2)(f)(iv)

However, Envirostrat consulted with

Te Ohu Kaimoana as a stakeholder.

Risk assessment – Nga Whakatūpato

22. There is no risk in you receiving and accepting this report, however there are three issues that you will need to be cognisant of when making your decision. DOC and Fisheries New Zealand will provide you with detailed advice on these risks in the upcoming advice paper.

23. The first is the issue noted above – Kāi Tahu is concerned that the reviewer's recommendation is based on values rather than reliable up-to-date evidence.

24. The second is that the decision you make about whether or not to extend the marine reserve may be contentious and have implications for other marine protection priorities. Environmental groups support extending the reserve, while fishing interests and iwi may consider that this would remove future development potential.

25. The third is that Forest and Bird New Zealand were concerned that Envirostrat considered the value of other fisheries in the additional area when that was not a requirement of the legislation.

Next steps – Nga Tāwhaitanga

26. It is now your role, in agreement with the Minister of Fisheries, to make a decision on the extension of the Moutere Ihupuku / Campbell Island Marine Reserve. The following steps are required by the Act:

- a. You are required to provide the recommendation report to the Minister of Fisheries as soon as practicable after receiving it. At that point a 90-working-day statutory timeframe commences for the Minister of Fisheries to provide you with his response to the report.
- b. You and the Minister of Fisheries are required to consult each other and, within the 90 working days, the Minister of Fisheries is required to provide his response to the report to you.
- c. If you are satisfied that the requirements of the Act are met then, with the agreement of the Minister of Fisheries, you decide whether or not to recommend the making of an Order in Council to extend the marine reserve to include the “additional area”.
- d. If you decide to extend the marine reserve, the commencement of the order must be no later than 2 March 2020.

27. Note that the Act only provides two options – either you and the Minister of Fisheries agree to extending the marine reserve, or you do not. If you wish to follow a third path (such as deferring a decision on whether to extend the reserve to the future or modifying the reserve's formation) you will have to decide not to extend the reserve in this process, then undertake another course of action to accomplish your requirements.

28. DOC and Fisheries New Zealand have collaborated productively throughout the review process and will work together to provide joint advice to you and the Minister of Fisheries to support your joint decision-making.

Attachments – Nga Tāpiritanga

- Attachment 1 – Independent Review of the Moutere Ihupuku / Campbell Island Marine Reserve and Additional Area. Prepared by Envirostrat Consulting Limited.
- Attachment 2 – Subantarctic Islands Marine Reserves Act 2014 section 8.

ENDS

Proactive release